

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10cv172**

SYNOVUS BANK,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
JAMES G. KARP; G. DANIEL SIEGEL;)	
and THE KARP FAMILY LIMITED)	
PARTNERSHIP,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the court on plaintiff’s Motion to Dismiss. In such motion, filed October 14, 2010, plaintiff seeks dismissal of defendants’ counterclaims. On November 1, 2010, within the time provided under Rule 15(a)(1)(B), defendants filed their Amended Counterclaim. Through such amendment, the Motion to Dismiss is moot as a matter of law and will not be the subject of a separate recommendation. Taylor v. Abate, 1995 WL 362488, *2 (E.D.N.Y.1995)¹ (“Defendants’ motion to dismiss is addressed solely to the original complaint… Consequently, upon the filing of the amended complaint, their motion is mooted and, therefore, denied.”); In re

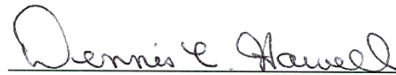
¹ Due to the limits of ECF, copies of unpublished decisions cited in this Order are incorporated into the court record through reference to the Westlaw citation.

Colonial Ltd. Partnership Litig., 854 F.Supp. 64, 80 (D.Conn.1994) (noting where “a plaintiff amends its complaint while a motion to dismiss is pending” the court may “deny[] the motion as moot”); Rathke v. HCA Management Co., Inc., 1989 WL 161431, at *1 n. 1 (D.Kan.1989) (holding that “motion to dismiss ... became moot when plaintiff filed an amended complaint”); Gresham v. Waffle House, Inc., 586 F.Supp. 1442, 1444 n. 1 (N.D.Ga.1984) (same).

ORDER

IT IS, THEREFORE, ORDERED that plaintiff’s Motion to Dismiss (#10) is **DENIED** without prejudice as moot.

Signed: November 3, 2010

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Dennis L. Howell
United States Magistrate Judge

